SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN, VALCOUR BONIN, ET AL.,
PLAINTIFFS IN ERROR,

vs.

THE GULF COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF IN BEHALF OF PLAINTIFFS IN ERROR, ON QUESTION OF JURISDICTION.

This suit is one arising under the Constitution and laws of the United States. The decision of the circuit court of appeals is therefore reviewable here on the writ of error, since the jurisdiction of the circuit court, did not depend exclusively upon the diverse citizenship of the parties, but was equally maintainable in said court on account of the subject-matter.

The plaintiffs in error asserted a title to the land in controversy received from the United States, and it is in affirmance of, and to assert, this title that this suit is brought.

Under the petition of plaintiffs the court is called to decide, whether the statute of limitations, or prescription, begins to run against the patentee prior to the issuance of the patent. This requires an interpretation of the act of Congress of March 3, 1807, under which the patent of plaintiffs was issued. This would be, of itself, enough to maintain the jurisdiction here, as there would thus be presented the question of the interpretation of an act of Congress, or title acquired from the United States, depending upon such act of Congress. This would make the case at least, one arising under the laws of the United States. But, independent of that conspicuous feature of the case, it is unquestionably one arising under the Constitution and laws of the United States, or a treaty made by the United States.

The petition sets out, that by a grant from the Spanish government, to which the land belonged, it was acquired by Du Buclet, de St. Clair, and Gonsoulin, in 1783; that, by legal and proper transfers, the interest of Du Buclet, de St. Clair, and Gonsoulin had become vested in the heirs of Gonsoulin and his wife, plaintiffs' ancestors; that to these—that is, the heirs of Gonsoulin—a patent has been issued by the United States Government after due recognition of their rights by the Commissioner of the Land Office; that the rights of the plaintiffs are recognized in the Commissioner's reports in the United States Land Office, of the year 1875. Plaintiffs aver, that their claim to the said grant and concession covering said land dates back to the year 1783, or thereabouts, and that this concession was recognized and confirmed by the United States Government, after proper and legal surveys had defined the boundaries, and segregated said lands; that the latter was then in the possession of and illegally detained and held by the defendant; that plaintiffs were entitled to be declared the owners of the said lands, which were averred to be worth twenty-five thousand dollars.

This petition was originally filed in the twenty-fourth judicial district court for the parish of St. Mary, State o

Louisiana, from which it was removed by defendant into the circuit court of the United States for the eastern district of Louisiana.

By supplemental petition filed in the circuit court (R., p. 17) plaintiffs averred that they were the true and lawful owners, jointly and in indivision, of Belle Isle; that on August 21, 1878, there was issued a patent, or letters patent, of the United States to said land, by which, the same were given and granted unto Dauterive Du Buclet, Benoist de St. Clair, and Francois Gonsoulin, or to their legal representatives, or to their heirs and assigns; that the said patent, letters patent, or grant, constituted a title to the said property in favor of the grantees therein named, their representatives, heirs, and assigns, which was legal, valid, and binding as to all persons; also that the Gulf Company, a corporation created by and organized under the laws of the State of New Jersey and a citizen of that State, but having an agent in said parish of St. Mary, within the eastern district of Louisiana, with full power to receive citation and stand in judgment, was in possession of said property under some pretended title of ownership (R., p. 19).

By section 5 of the act of March 3, 1891 ("the court of appeals act"), appeals or writs of error, were to be taken, from or to the district courts and existing circuit courts direct to, or from, the Supreme Court in cases where the jurisdiction was in issue, in prize cases, in cases where there was a conviction of a capital or other infamous crime, in cases involving the construction or application of the Constitution of the United States, in any cases in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question, and, finally, in any case where the constitution or law of a State, was claimed to be in contravention of the Constitution of the United States.

By the terms of section 6 of that act, the circuit courts of appeals were given appellate jurisdiction to review, by writ

of error or appeal, final decisions of the circuit courts other than those provided for in section 5, unless otherwise provided by law, and the judgment or decrees of the circuit courts of appeals were made *final in all cases, in which the jurisdiction was dependent entirely upon the opposite parties to the suit or controversy, being aliens, and citizens of the United States, or citizens in different States.*

The question here, therefore, is, whether or not the jurisdiction or power of the circuit court depended *entirely* upon the diverse citizenship of the opposing parties, or whether or not, this jurisdiction could have been maintained on other grounds.

The jurisdiction of the circuit court did not depend *entirely* upon the citizenship of the parties to the suit. Plaintiffs set out their title, which is a grant from the Spanish government, made when Louisiana formed a part of the dominion of Spain. The United States had issued its patent for the land covered by the original Spanish grant, which was recognized and confirmed by the United States, after the boundaries of the same had been defined and segregated by legal and proper surveys; that the *corpus* was in the possession of and *illegally* detained and held by the defendant.

Plaintiffs setting up a patent of the United States as being in part their muniment of title, the validity, *vel non*, of such patent was clearly at issue, arising on the face of plaintiffs' petition. As every patent for lands is issued under the authority of Congress, the determination of the question, whether or not the patent is legal and valid, necessarily involves a construction of the act of Congress under which it was issued.

It has been decided, that the circuit court of the United States has jurisdiction, irrespective of the citizenship of the parties, of an action in ejectment where the controversy turns upon the validity of a patent of the United States.

Doolan vs. Carr, 125 U. S., 618–620.

Of such an action, the circuit court has jurisdiction, being one arising under the Constitution and laws of the United States.

125 U. S., 620.

Where plaintiff claims an equitable title to land originally belonging to the United States, it has been held that this question can only be determined by an examination and construction of the United States land laws, and the Federal courts have jurisdiction, where such examination and construction is demanded; that it had been repeatedly decided, that a suit may be properly said to arise under the Constitution or laws of the United States whenever its correct decision depends on the construction of either; that cases arising under the laws of the United States, are such as grow out of the legislation of Congress, whether these constitute the right, privilege, claim, protection, or defense of the party by whom they are asserted in whole or in part. Wherever the right or remedy sought or the defense made depends upon a law of Congress, or the construction of the Constitution, the act of 1875 (which was unaffected in this regard by its subsequent amendment) unquestionably opened the Federal courts to such suitors. This doctrine has been so frequently declared that it requires no further argument, (Cohens *vs.* Virginia, 6 Wheat., 264; Osborn *vs.* Bank, 9 Wheat., 738; Mayor *vs.* Cooper, 6 Wall., 847; Water Co. *vs.* Keyes, 96 U. S., 199; Tennessee *vs.* Davis, 100 U. S., 257; Railroad Co. *vs.* Mississippi, 102 U. S., 135).

Jones vs. Florida C. & P. R. Co. et al., 41 Fed. Rep., 70–71.

In the cited case preceding, the court said:

"The plaintiff claims rights, by, and under the acts of Congress for the disposing of public lands, and if he has complied with the laws for that purpose, so as to hold a homestead

or pre-emption right, he is entitled to some remedy in this case. How can this question be determined but by an examination and construction of the land laws, and a determination of the equities existing between the United States and plaintiff?"

41 Fed. Rep., 71.

In *Pierce vs. Molliken*, 78 Fed. Rep., 196 *et seq.*, the plaintiff in an action of ejectment, set up a patent of the United States in his favor. It is true there, there was a denial by the defendant of the validity of this patent, while here it would be assumed, for the sake of argument, that nothing but the original petition can be considered in determining whether or not the case involves a Federal question, but the averment of the petition that a patent had issued to the plaintiffs, that their title had been recognized by the Commissioners of the United States Land Office in their reports and otherwise, and that the land is *illegally* detained and held by the defendant, and this makes a consideration of this patent, and the acts of Congress under which it is issued, absolutely necessary, in order to determine whether or not the patent was valid, or its effect or that of the acts of Congress authorizing it; likewise the petition contains the averment that the Spanish grant and concession, under which the patent was delivered, was recognized and confirmed by the United States, which necessarily involves the validity and effect of such recognition and confirmation. The conclusion of the court in the cited case was, that where the plaintiff claimed under a patent issued by the United States, the validity or binding effect of which was denied, the suit was one arising under the Constitution or laws of the United States, and that this fact alone gave the Federal court jurisdiction; that the plaintiff asserting a right under the laws of the United States was sufficient to show jurisdiction in the circuit court. (See also 167 U. S., 65–72.)

In *Hills vs. Homton*, 12 Fed. Cases, 193, case No. 6508 (4

Sawyer, 195), plaintiff claimed title to the land in controversy, under a patent issued upon a confirmed Mexican grant. While here the plaintiffs claim, under a patent issued upon a Spanish grant or concession, which was recognized by the United States Government, in the cited case, it was held that the case depended upon a controverted construction of the patent, and hence the national courts had jurisdiction irrespective of the citizenship of the parties.

It must appear, that the jurisdiction of the circuit court rested entirely upon the diverse citizenship of the parties, in order that the judgment of the court of appeals may be final. If the jurisdiction of the circuit court, could have been maintained on any ground, besides that of the character of the parties, the judgment of the court of appeals is not final, but is reviewable by writ of error in this court.

This was decided by this court no longer ago than February 23, 1903, in Northern Pacific R. Co. *vs.* Soderberg, pending here on writ of error to review the decision of the circuit court of appeals for the ninth circuit (188 U. S., 528). In the cited case the court said:

"Motion was made to dismiss this appeal for the reason that as the jurisdiction of the circuit court was invoked upon the ground of diverse citizenship that the decree of the circuit court of appeals is final, under section 6 of the court of appeals act of 1891, as interpreted by the decisions of this court, in Colorado Central Mining Co. *v.* Turck, 150 U. S., 133; Bargmeyer *v.* Idler, 159 U. S., 408, and The Press Publishing Co. *v.* Monroe, 164 U. S. 105. But to impress the attribute of *finality* upon the judgment of the circuit court of appeals, it must appear that the original jurisdiction of the circuit court was dependent (*entirely*) upon diverse citizenship. That is not the case here. Plaintiff does indeed set up a diversity of citizenship as one of the grounds of jurisdiction, but as it appears that his title rests upon a proper interpretation of the land grants of 1864, as to the exception of non-mineral lands, there is another ground wholly independent of citizenship; under that clause of section 1 of the act of 1888, 25 Stat., 433, clothing

the circuit court with jurisdiction of all civil suits involving over $2,000.00, 'and arising under the Constitution or laws of the United States.' If the case made by the plaintiff be one which depends upon the proper construction of an act of Congress, with the contingency of being sustained by one construction and defeated by another, it is one arising under the laws of the United States (*Doolan v. Carr*, 125 U. S., 618; *Cooke v. Avery*, 147 U. S., 375)."

188 U. S., 528.

In *Warner vs. Searle & Hereth*, 191 U. S., 195, it was held that where, independent of the citizenship of the parties, the bill disclosed a ground upon which the jurisdiction of the circuit court could be maintained that the judgment of the court of appeals in such a case was not final, but reviewable on writ of error in this court; in this connection the remarks of the court were as follows:

"In the present case, diverse citizenship, and requisite amount existed, and the circuit court, therefore, had jurisdiction, but, it is argued that the jurisdiction depended entirely on diversity of citizenship, and hence that the decision of the circuit court of appeals was final. We think, however, that as infringement of a trade-mark registered under the act was charged, the averments of the bill, though quite defective, were sufficient to invoke the jurisdiction also on the ground, that the case arose under a law of the United States, and will not, therefore, dismiss the appeal."

There is involved in the present case, no constitutionality of any act of Congress, but to pass upon the validity or effect of the patent necessarily involves a construction of the acts of Congress under which the patent was issued; in such a case the judgment of the court of appeals is not final, but is reviewable on writ of error in this court.

Spreckles Sugar Refinery Co. vs. McClain, 192 U. S., 397–410.

In any case where the construction is invoked, by the plaintiff's petition, the judgment of the court of appeals is

not final, and will be taken from that court to the Supreme Court.

Hughes' Federal Procedure, pp. 465 (2).

Where jurisdiction of the circuit court rests, not *alone* on the diverse citizenship of the parties, but also on a Federal question, the jurisdiction of the circuit court of appeals is not final, but subject to review, on a writ of error, from the Supreme Court.

Huguly Manfg. Co. vs. Cotton Mills, 184 U. S., 290.

It has been held that a Federal question was presented, if it appeared from the plaintiff's statement of facts, by a construction which may be fairly claimed and contended for, of a provision of a statute, would defeat plaintiff's right of recovery.

State of Minnesota vs. Duluth, 87 Fed. Rep., 497.

As a Federal question must be presented by plaintiff's own statement of his case, the jurisdiction of the circuit court on this ground must depend entirely upon what might be fairly and reasonably claimed under the allegations thereof, not what the defendant might subsequently actually make.

The allegation here being, that the authors of the title of plaintiffs' ancestors acquired from the United States by the confirmation of a Spanish grant, and that a patent had issued to the plaintiffs from the United States, after due recognition of their rights, by the Land Office, would afford the basis of a plausible and reasonable claim, that a fair interpretation or construction of the acts of Congress, by which such concession was made or patent issued, would defeat plaintiffs' claim for recovery.

It would thus appear that this case is one arising under the Constitution and laws of the United States, from plain-

tiffs' own statement of their claim, whatever might be the contention or claim of the defendant.

In such a case this court has the power not only to hear and determine the cause, but has the right to decide every issue that may be subsequently raised, whether the decision of the case ultimately turns on the question of Federal, local, or general law, this being a matter which in nowise affects the jurisdiction of the case.

N. O., etc., R. R. Co. vs. Mississippi, 102 U. S., 135–141.
Tennessee vs. Davis, 100 U. S., 257.

The rule that a Federal question must appear from the plaintiff's pleadings, will not be permitted to defraud the Federal courts of jurisdiction; accordingly, a suit against a receiver of the Federal court is removable, though the fact as to the appointment is not stated in the complaint.

Winter vs. Drake, 102 Fed. Rep., 545.

It has been held that where it was necessary to determine the meaning and effect of an act of Congress under which a patent issued the case was one of which the Supreme Court had jurisdiction.

French-Glenn, etc., Co. vs. Springer, 185 U. S., 47–54.

Respectfully submitted.

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